

Message Text

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C O N F I D E N T I A L USNATO 4446

E. 9. 11652: GDS

TAGS: MARR NATO

SUBJECT: NICS TARE CONTRACT AWARD

REFS: A. STATE 198118

B. STATE 6430, 102158Z JAN 75

C. USNATO 124, 141755Z JAN 75

D. USNATO 192, 161930Z JAN 75

E. LOVELAND LETTER TO MILLER, INFRA 2024/75, 14 MAR 75

SUMMARY. THIS MESSAGE PROVIDES INFORMATION TO PERMIT REPLY TO SENATOR SCOTT'S OFFICE ON CURRENT STATUS OF NICSMA EVALUSATION ON BIDS TO SUPPLY NATO TARE EQUIPMENT. WE ALSO OUTLINE PROPOSED ACTIONS AND REQUEST CONCURRENCE. END SUMMARY.

1. AS FIRST MAJOR COMPETITIVE CONTRACT AWARDED BY NICSMA, TARE WAS CURSED WITH ABNORMAL DIFFICULTIES IN BID SOLICITATION. AFTER MONTHS OF WRANGLING OVER CONTRACT TERMS, NICSMA WAS FINALLY AUTHORIZED TO CALL FOR BIDS IN LATE 1974. AT BIDDERS' CONFERENCE IN DECEMBER, SEVERAL US CONTRACTORS WERE UNSATISFIED WITH NICSMA ANSWERS TO THEIR QUESTIONS CONCERNING THE GENERAL CLAUSES AND CONDITIONS STIPULATED BY NICSMA. AS A RESULT WE TOOK THE MATTER UP WITH PAYMENTS AND PROGRESS COMMITTEE AND ACHIEVED COMPROMISE ACCEPTABLE TO ALL (REFS B, C, D, E).

2. DURING THE REMAINDER OF THE BID PREPARATION PERIOD
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WE HAD SEVERAL CONSELING SESSIONS WITH THE US CONTRACTORS INVOLVED WITH TARE. PROCUREMENT. OBJECT OF THE SESSIONS WAS TO IMPRESS UPON CONTRACTORS THAT NATO BIDDING RULES REQUIRED COMPLIANCE WITH ALL OF THE REQUIREMENTS OF THE INVITATION TO BIDS WITHOUT EXCEPTION. COM-

PLIANT BIDS WOULD THEN BE COMPARED ON PRICE BASIS AND AWARD MADE TO THE LOWEST PRICE.

3. THREE COMPANIES SUBMITTED BIDS FOR THE TARE PROJECT:

LITTON AND BURROUGHS (US) AND PHILIPS (NETHERLANDS). THE COVER LETTER ON THE BURROUGHS BID STATED COMPLETE COMPLIANCE WITH NICSMA'S TECHNICAL REQUIREMENTS BUT TOOK EXCEPTION OF SEVERAL OF THE FINANCIAL AND ADMINISTRATIVE REQUIREMENTS WHICH HAD BEEN THE OBJECT OF THE ABOVE COMPROMISE. PHILIPS IS SAID TO HAVE TAKEN EXCEPTION TO CERTAIN FACTORY TESTING REQUIREMENTS. LITTON CLAIMED TO BE THOROUGHLY COMPLIANT. IRRESPECTIVE OF THE COMPANY STATEMENTS, NICSMA EVALUATED BIDS IN GREAT DETAIL AND ENGAGED IN A DIALOGUE WITH ALL COMPANIES BEFORE DECIDING ON COMPLIANCE QUESTION.

4. ON 6 AUGUST NICSMA NOTIFIED BURROUGHS AND PHILIPS THAT THEIR BIDS WERE CONSIDERED TO BE NON-COMPLIANT AND THAT THEY HAD THREE WEEKS TO LODGE A PROTEST THROUGH THEIR RESPECTIVE NATO DELEGATIONS UNDER NATO'S BIDDING RULES (AC/4-D/2261(FINAL)). BURROUGHS REP DISCUSSED THE SITUATION WITH US AND AGREED THAT WE HAD NO BASIS FOR DISPUTE AGAINST THE RULING IN THEIR CASE SINCE THEIR COVER LETTER SPECIFICALLY MENTIONED THAT THEY WOULD NOT ACCEPT NICSMA'S GENERAL CLAUSES AND CONDITIONS. BURROUGHS RECOMMENDED, HOWEVER, THAT WE DISPUTE THE EVALUATION ON THE BASIS THAT THE ONLY REMAINING QUALIFIED CONTRACTOR(LITTON) COULD NOT POSSIBLY BE COMPLIANT. WHEN WE ASKED THE SOURCE OF THE INFORMATION THE REP TALKED VAGUELY OF QUOTE INDUSTRIAL ESPIONAGE UNQUOTE. WE DECLINED TO INTERCEDE UNDER THE CIRCUMSTANCES FOR THE FOLLOWING REASONS,AND SUGGESTED THAT FURTHER ACTION WOULD BE SUSPENDED SUBJECT TO GUIDANCE FROM WASHINGTON:

A. AC/4-D/2261(FINAL) PERMITS DISPUTE ONLY ON BASIS OF CONTRACTORS OWN BID DISQUALIFICATION, NOT ON BASIS OF QUALIFICATION OF BIDS BY OTHER CONTRACTORS.

B. AS REPRESENTATIVE OF US INDUSTRY WE WERE SATISFIED THAT BID WOULD BE AWARDED TO A US CONTRACTOR UNDER THE NATO RULES ON THE BASIS OF THE LOWEST-PRICED, RESPONSIVE OFFER.
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5. NATO RUMORS INDICATE THAT THE NETHERLANDS DELEGATION MAY DECLARE A DISPUTE BEFORE THE DEADLINE (P&P COMMITTEE MEETING ON 28 AUG 75). IF THEY DO SO WE INTEND, WITHOUT DECLARING A DISPUTE OURSELVES, TO TAKE MEASURES DURING THE MEETING TO PROTECT BURROUGHS' INTERESTS. THUS, IN THE UNLIKELY EVENT THAT THE COMMITTEE RULED IN FAVOR OF PHILIPS, BURROUGHS COMPLIANT WOULD ALSO BE CONSIDERED. THIS, HOWEVER, IT NOT WHAT BURROUGHS DESIRES SINCE THEIR REPS AGREE THAT THEIR HIGHLY-COMETENT BID IS PROBABLY THE HIGHEST PRICED AND THE COMPETITION WOULD BE BETWEEN LITTON AND PHILIPS. THEY WANT LITTON DISQUALIFIED SO THAT BURROUGHS COULD DECREASE THEIR PRICE ON A REBID.

6. BURROUGHS' LOCAL REP, KEN ROGERS, HAS APPOINTMENT WITH US ON

FRIDAY, 22 AUGUST, TO DISCUSS BURROUGHS CLAIM THAT NICSMA HAS VIOLATED NATO BIDDING RULES, THUS PROVIDING BURROUGHS WITH POSSIBLE BASIS FOR LEGAL RECOURSE THROUGH BELGIAN COURTS. WE DO NOT UNDERSTAND THE CONTENTION IN VIEW OF NATO'S LEGAL STATUS AND OF FACT THAT AC/4-D/2261(FINAL) DOES NOT FORM PART OF THE TARE DOCUMENTS. WE WILL LISTEN TO THE CLAIM, HOWEVER, AND REPORT ANY NEW ASPECTS.

7. FAILING ADDITIONAL FACTS RECOMMEND WE BE AUTHORIZED TO PROCEED AS OUTLINED ABOVE.

COMMENT: WE RECOMMEND DISCRETION IN USE OF ABOVE INFORMATIO IN REPLY TO SENATOR SCOTT. PARAS 1-3 AND PARTS OF PARA 4 APPEAR TO BE APPROPRIATE. END COMMENT.
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